# UNITED STATES OF AMERICA DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT Washington, D.C.

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In the Matter of:	*	
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SHARPE JAMES,	*	<b>Docket No. 09-3583-DB</b>
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Respondent.	*	
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# **DEBARRING OFFICIAL'S DETERMINATION**

#### INTRODUCTION

By Notice of Proposed Debarment dated April 10, 2009 ("Notice"), the Department of Housing and Urban Development ("HUD") notified Respondent SHARPE JAMES that HUD was proposing his debarment from future participation in procurement and nonprocurement transactions as a participant or principal with HUD and throughout the Executive Branch of the Federal Government for a three-year period from the date of the final determination of this action. The Notice further advised Respondent that his proposed debarment was in accordance with the procedures set forth in 2 CFR parts 180 and 2424. In addition, the Notice informed Respondent that his proposed debarment was based upon his conviction in the United States District Court for the District of New Jersey for violation of 18 U.S.C. 1341 (Mail Fraud), 18 U.S.C. 666(a)(1)(A) (Fraud Involving Local Government Receiving Federal Funds), and 18 U.S.C. 371 (Conspiracy). Respondent was sentenced to a term of twenty-seven months in prison, three years of probation, and fined \$100,000.00 for his conviction.

A telephonic hearing on Respondent's proposed debarment was held in Washington, D.C. on August 12, 2009, before the Debarring Official's Designee, Mortimer F. Coward. Respondent participated by phone, appearing *pro se*. Joe Kim, Esq. along with Geoff Patton, Esq. appeared on behalf of HUD.

#### Summary

I have decided, pursuant to 2 CFR part 180, to debar Respondent from future participation in procurement and nonprocurement transactions, as a participant, principal, or contractor with HUD and throughout the Executive Branch of the Federal Government, for a period of three years from the date of this Determination. My decision is based on the administrative record in this matter, which includes the following information:

- 1. The Notice of Proposed Debarment dated April 10, 2009.
- 2. The thirteen-count indictment filed in the United States District Court for the District of New Jersey charging Respondent and his co-conspirator with the commission of several offenses involving tax fraud and other fraudulent activities related to the sale and disposition of City of Newark-owned properties in violation of 18 U.S.C. 371, 666(a)(1), 18 U.S.C. 1341, 18 U.S.C. 2, and 26 U.S.C. 7201 and 7206(1).
- 3. The Judgment in a Criminal Case entered July 30, 2008, recording Respondent's conviction on counts one through six of the Indictment, and the Court's imposition of a twenty-seven month prison term, a three-year term of probation, and a fine of \$100,000.00.
- 4. A letter with an attachment dated April 14, 2009, addressed to the Debarring Official's Designee from Respondent.
- 5. A letter dated May 13, 2009, from Respondent addressed to the Debarring Official's Designee.
- 6. A letter dated June 17, 2009, accompanied by an attachment addressed to the Debarring Official's Designee.
- 7. A letter dated July 9, 2009, along with attachments addressed to the Debarment Docket Clerk.
- 8. The Government's Brief in Support of Debarment filed May 26, 2009 (including all exhibits and attachments thereto).

## Government Counsel's Arguments

Government counsel recites that Respondent was found guilty after a jury trial of the five counts of the thirteen-count indictment with which he and his co-defendant Tamika Riley were charged. The charges on which Respondent was convicted involved mail fraud, fraud involving local government receiving federal funds, and conspiracy to defraud the public of honest services. For his conviction, Respondent was sentenced to 27 months in prison, three years' probation, and a fine of \$100,000.00.

Counsel cites from the Indictment, which describes the scheme perpetrated by Respondent and Ms. Riley. Respondent used his official positions as mayor of the city of Newark and as a New Jersey State Senator to improperly influence the sale of city-owned properties at below-market prices to Ms. Riley. The program under which the city sold the properties to Ms. Riley developed from legislation introduced by Respondent as a State Senator. The sale of the properties to Ms. Riley violated the contracts which governed the properties' sale. The Indictment also charged that Ms. Riley, with whom Respondent allegedly had a personal relationship, lacked the necessary experience and financial resources to develop the properties, which was a requirement under the program. Nonetheless, Respondent directed city employees to sell the properties to Ms. Riley. Ms. Riley resold the nine properties which she purchased for approximately \$46,000.00 for \$665,000.00. The properties were resold in a few weeks, in most cases without the necessary rehabilitation required under the program.

Counsel argues that as mayor of Newark, Respondent was an agent and representative of the city of Newark, a participant in covered transactions by reason of the city's receipt of HUD funds. As an agent or representative of a participant, Respondent also was a participant pursuant to 2 CFR 180.980, thus making him subject to HUD's

debarment regulations. Additionally, counsel argues that Respondent was a principal in accordance with 2 CFR 180.995(a), to the extent Respondent had "management or supervisory responsibilities related to a covered transaction" with the city of Newark, a participant. Similarly, because Respondent's position as mayor gave him influence and control over the use of HUD funds provided to the city, Respondent was a principal under 2 CFR 180.995(b)(2).

Counsel next argues that Respondent's conviction for fraud, an offense "expressly enumerated as a cause for debarment" provides a basis for his debarment under 2 CFR 180.800(a)(1). Moreover, counsel continues, 2 CFR 180.125 authorizes HUD to debar a respondent to protect the public interest. Here, Respondent's conviction on several counts of fraud demonstrates that he lacks the necessary honesty and integrity to do business with the federal government. Thus, Respondent's debarment from further participation in federal programs is in the public interest.

In arguing for Respondent's debarment, counsel notes that, because Respondent's proposed debarment is based upon a conviction, the Department has established cause for debarment by a preponderance of the evidence. See 2 CFR 180.850. Counsel adds, however, that Respondent does not accept responsibility for his wrongdoing nor recognize the seriousness of his misconduct. As further aggravating factors, Counsel points to the frequency and duration of Respondent's fraudulent activities (conduct spanning the period 1999 to 2005) and the fact that he was mayor of the city when he engaged in the fraudulent conduct. Counsel also contends that Respondent fails to offer any credible mitigating factors. Respondent's protestations of his innocence, and his claim that the "charges were irrefutably refuted" at trial "are conclusively disproved by the judgment in his criminal case" and "his assertion that the facts alleged in the indictment were never proven is factually incorrect." Counsel also dismisses Respondent's attempts here to collaterally attack his conviction as "beyond the scope of this proceeding," and adds that because the "Debarring Official has no authority to entertain the Respondent's allegations, they are irrelevant to this proceeding." Based on the above, counsel concludes that a three-year debarment is necessary to protect the public interest and HUD.

# Respondent's Arguments

Respondent admits that Newark, during his tenure as mayor, received HUD funds; however, Respondent asserts that no HUD or city funds were involved in the transactions for which he was convicted. Respondent testified that the city lost no money, but gained money from the sale of the city-owned properties. Respondent's position is that there was no fraud or embezzlement proven in the five counts on which he was convicted. As the Respondent sees it, there is an "absence of proof" that he committed the criminal offenses for which he was convicted because the judge imposed less time than the Government wanted. Respondent argues that the sentence is "clear evidence" that the Government did not prove its criminal case against him. Respondent further contends that the Government criminal charges against him are "political not factual," citing the Government's actions in

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<sup>&</sup>lt;sup>1</sup> Gov't Brief at 13-14.

 $<sup>^2</sup>$  Id

Senator Ted Stevens' case as similar to the Government's conduct in his criminal case. Respondent argues "for a postponement" of his appeal.

According to Respondent, his "trial proved that [he] was innocent of all charges and it (the verdict) will be reversed." Respondent relies on his paraphrase of the judge's remarks at sentencing, reproduced below, as evidence of his innocence.

There was no corruption proven
There was no conspiracy proven
Ms. Riley was a qualified developer
She paid the same price as everyone else
James after a mere introduction (Mayor's [sic] do it all the time) did not assist her
The City of Newark did not lose any money
No developer lost any money
This was a victimless incident
There is no aggravated role for James
There is no restitution for James
James rebuilt the city in an exemplary manner for twenty years<sup>3</sup>

Respondent also views the judge's rejection that he pay restitution as an indication of his innocence.

# Findings of Fact

- 1. Respondent was the mayor of the city of Newark, which received HUD funds during his tenure.
- 2. Respondent used his official position to influence the sale of city-owned properties to a personal acquaintance.
- 3. Respondent and his acquaintance were indicted on thirteen counts involving fraudulent activities related to the sale to and purchase by Respondent's acquaintance of the properties.
- 4. Respondent was convicted of five counts including mail fraud, fraud involving local government receiving federal funds, and conspiracy to defraud the public of honest services and was sentenced to a prison term of twenty-seven months, placed on three years' probation, and fined \$100,000.00.
- 5. Respondent expressed no remorse for his criminal conduct and challenged the justness of his conviction.

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<sup>&</sup>lt;sup>3</sup> See Respondent's July 9, 2009, letter to the Debarment Docket Clerk. It is worth remembering that the judge's remarks were made at sentencing, that is, Respondent had already been found guilty by the jury at his trial. A judge's remarks at sentencing cannot undo a jury verdict, though, as here, it may explain the basis for the harshness or leniency of the sentence imposed. Except for Respondent's reference to an appeal of his conviction, Respondent did not indicate what, if any, post-trial motions had been filed and the disposition thereof, e.g., a motion to set aside the jury's verdict. Because of the present posture of the criminal matter, it would be fair to conclude that Respondent received no relief from any post-trial proceedings.

#### Conclusions

Based on the above Findings of Fact, I have made the following conclusions:

- 1. The City of Newark was a participant in covered transactions by virtue of its receiving grants from HUD. See 2 CFR 180.200 and 180.970(a).
- 2. Respondent as mayor of the city of Newark at all relevant times was an agent or representative of the city.
- 3. As an agent or representative of the city and in a position to control the use of HUD funds provided the city, Respondent was a participant or principal in covered transactions pursuant to 2 CFR 180.980 and 995.
- 4. As a participant or principal in covered transactions, Respondent is subject to HUD's debarment regulations. *See* 2 CFR 180.120.
- 5. Respondent's criminal conviction serves as the basis for his debarment.
- 6. Pursuant to 2 CFR 180.800, a conviction for fraud, *inter alia*, is a cause for debarment.
- 7. Respondent's attempts to challenge his criminal conviction in this debarment proceeding, either by reference to the appeal of his conviction or alleged misconduct in his criminal trial, find no support in the law. See, e.g., In the matter of Frank Moscato and City Construction Development, Inc., HUDBCA No.94-A-127-26, 1994 HUD BCA Lexis 8 (August 1, 1994). See also, In the Matter of Richard Scarbrough, HUDBCA NO. 90-4885-D5, 1990 HUD BCA Lexis 4 (February 13, 1990).
- 8. Contrary to Respondent's assertions, although the trial judge admonished the prosecutor at sentencing for the prosecutor's apparently unduly broad statements with respect to Respondent's actions, the trial judge at no time intimated that Respondent was innocent of the criminal charges.
- 9. The fact Respondent received a much lower sentence than that argued for by the Government is no proof of his innocence of the charges for which the jury had convicted him.
- 10. Respondent does not accept responsibility for his criminal conduct and expresses no regret for his wrongdoing. See 2 CFR 180.860(g).
- 11. The Government has met its burden of demonstrating that cause exists for Respondent's debarment based on Respondent's conviction. *See* 2 CFR 180.850 and 855.
- 12. Respondent's actions that led to his criminal conviction raise grave doubts with respect to his business integrity and personal honesty.
- 13. Respondent has raised no mitigating factors nor are there any evident in this case to the Debarring Official.

<sup>&</sup>lt;sup>4</sup> See excerpts of Transcript of Proceedings, Sentencing Hearing, July 29, 2008 ("Transcript") accompanying Respondent's letter of June 17, 2209, to the Debarring Official's Designee.

The sentencing judge undeniably made sympathetic comments about Respondent's plight and rejected the Government's arguments for harsher treatment of Respondent. That, however, is not a vindication of Respondent's conduct, as is evident from the judge's acknowledgment that "what happened here, as I've said and I'll probably say several more times, was the breach of the duty of honest services." *See* Transcript (page numbers are illegible) attached to Respondent's July 9, 2009, letter to Debarment Docket Clerk. One of the offenses with which Respondent was charged was Conspiracy to Defraud the Public of Honest Services.

- 14. The seriousness of Respondent's criminal conduct acts as an aggravating factor justifying a period of debarment.
- 15. HUD has a responsibility to protect the public interest and take appropriate measures against participants whose actions may affect the integrity of its programs.
- 16. HUD cannot effectively discharge its responsibility and duty to the public if participants in its programs or programs that it funds fail to act with honest and integrity.

#### **DETERMINATION**

Based on the foregoing, including the Findings of Fact, Conclusions, and the administrative record, I have determined, in accordance with 2 CFR 180.870(b)(2)(i) through (b)(2)(iv), to debar Respondent for a three-year period from the date of this Determination. Respondent's "debarment is effective for covered transactions and contracts that are subject to the Federal Acquisition Regulation (48 CFR chapter 1), throughout the executive branch of the Federal Government unless an agency head or an authorized designee grants an exception."

Dated: 9/27/09

Henry S. Czauski Debarring Official

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